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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,893	03/08/2004	Ken Kalinoski	263497US8	1528

22850   7590   06/18/2009
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EXAMINER
LOFTIS, JOHNNA RONEE

ART UNIT	PAPER NUMBER
3624	

NOTIFICATION DATE	DELIVERY MODE
06/18/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/795,893	KALINOSKI, KEN
	Examiner	Art Unit	
	JOHNNA R. LOFTIS	3624	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06 April 2009</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-4,6-18 and 20-31</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-4, 6-18, 20-31</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on 4/6/09 has been entered.

2.   Claims 1, 13 and 21 have been amended. Claims 1-4, 6-18 and 20-32 are pending and

have been examined as set forth below.

Response to Amendment

3.   In response to Applicant's amendment to the claims, any claim containing a negative

limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C.

112, first paragraph, as failing to comply with the written description requirement. Note that a

lack of literal basis in the specification for a negative limitation may not be sufficient to establish

a prima facie case for lack of descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd.

Pat. App. & Inter. 1993). See MPEP 2173.05(i)

Response to Arguments

4.   Applicant's arguments filed 4/6/09 have been fully considered but they are not

persuasive. Applicant argues the Capek reference does not teach identifying resources of the

priority list that are unavailable to satisfy meeting constraints due to a scheduled use; and

monitoring the unavailable resources for subsequent availability to satisfy meeting constraints. Examiner points to column 9 where it is shown that the system "monitors" availability of meeting location rooms such that a room is reserved for a particular person until a determined number of hours before the scheduled meeting time, at which point it becomes available for assignment to anyone. Here it clearly states the resource is monitored for availability. Prior rejections are upheld.

In response to Applicant's argument that Capek does not teach "limiting access to … resources according to one or more required authorizations". As stated previously, the claims, given the broadest reasonable interpretation read on scheduling of attendees. Further the specification does not preclude the resources from including attendees. Since Capek teaches weighting factors so the system can determine who is most important in the scheduling process, prior rejections are upheld.

Applicant also argues Capek does not teach one or more resources having limited access properties. Given the broadest reasonable interpretation, resources having limited access priorities would include availability of resources wherein the scheduling would only occur for resources that are accessible. Since Capek teaches monitoring availability of resources for purposes of scheduling meetings, prior rejections are upheld.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6.   Claims 1-4, 6-18 and 20-31 rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one skilled in the

relevant art that the inventor(s), at the time the application was filed, had possession of the

claimed invention. Specifically, claims are directed to scheduling meetings using resources

"other than meeting attendees and meeting locations". Support is not found in the specification

for such limitations.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 1-4, 6-12 and 21-32 are rejected as being directed toward non-statutory subject

matter because they are software per se. Claims recite a configuration engine and an availability

engine as well as a several elements that appear to be software modules or computer programs.

The current claim language does not specify the software is part of or statically embodied in a

physical medium. Software not statically embodied on a physical medium are considered

descriptive material per se. As drafted, the claim fails to define any structural and functional

interrelationships between the software per se and other elements of the invention that permit the

software's function to be realized. (See MPEP § 2106.01 Section I).

8.   Claims 13-18 and 20 are rejected under 35 U.S.C. 101. Based on Supreme Court

precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101

process must (1) be tied to another statutory class (such as a particular apparatus) or (2)

transform underlying subject matter (such as an article or materials) to a different state or thing.

Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978);

Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

        Thus, to qualify as a § 101 statutory process, the claim should positively recite the other

statutory class (the thing or product) to which it is tied, for example by identifying the apparatus

that accomplishes the method steps, or positively recite the subject matter that is being

transformed, for example by identifying the material that is being changed to a different state.

There are two corollaries to the machine-or-transformation test. First, a mere field-of-use

limitation is generally insufficient to render an otherwise ineligible method claim patent eligible.

The apparatus must impose meaningful limits on the method claim's scope to pass the test.

Second, insignificant extra-solution activity will not transform an unpatentable principle into a

patentable process. This means reciting a specific machine or a particular transformation of a

specific article in an insignificant step, such as data gathering or outputting is not sufficient to

pass the test.

        Applicant's method steps fail the first and second prongs of the new Federal Circuit

decision since they are not tied to a particular apparatus. Thus, claims 13-18 and 20 are non-

statutory.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this
or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United
States before the invention thereof by the applicant for patent, or on an international application by another who
has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention
thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999

(AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA

35 U.S.C. 102(e)).

10.   Claims 1-4, 6, 8-16, 20-25, and 27-31 are rejected under 35 U.S.C. 102(a and e) as being

anticipated by Capek et al, US 7,343,312.

As per claim 1, Capek et al teaches a user interface operable to accept meeting constraints

(column 3, lines 6-56; column 7, lines 40+); a resource properties database storing schedules for

the heterogeneous resources (column 4, lines 19-32); a scheduled events database storing

schedules for the heterogeneous resources (column 4, lines 19-32); a configuration engine

interfaced with the user interface and resource properties database, the configuration engine

operable to apply the meeting constraints and the resource properties to priority rules that

generate an ordered list of heterogeneous resource sets, each set having a valid configuration that

satisfies the meeting constraints (column 4, lines 1-36 – optimization of meeting variables based

on weights); an availability engine interfaced with the configuration engine and the scheduled

events database, the availability engine operable to select heterogeneous resources from the

ordered list based on the scheduled availability of resources (column 4, lines 29-32); and

identifying resources of the priority list that are unavailable to satisfy meeting constraints due to

a scheduled use; and monitoring the unavailable resources for subsequent availability to satisfy

the meeting constraints (column 7, lines 40-49 – availability is monitored for optimization of the

schedule).

      As per claim 2, Capek et al teaches the configuration engine is further operable to order

the list of heterogeneous resources according to a cost function, the list ordered with the greatest

priority given to the set of heterogeneous resources having the least cost to satisfy meeting

constraints (column 3, lines 56-67; column 10, lines 48-50 – traditional optimization of variables

based on constraints; includes minimization of costs).

      As per claim 3, Capek et al teaches the configuration engine cost function adjusts to user-

selected weights for one or more meeting constraints (column 7, lines 40-49 – constraints;

column 10, lines 48-50 min. cost).

      As per claim 4, Capek et al teaches the user-selected weights comprise one or more of

meeting timing capacity and locality (column 7, lines 40-49 – constraints)

      As per claim 6, Capek et al teaches an access controller interfaced with the availability

engine and the resource properties database, the access controller operable to restrict scheduling

of one or more resources having limited access properties (column 4, lines 19-32 – resource

availability).

As per claim 8, Capek et al teaches the access controller is further operable to override a scheduled use of a resource to satisfy meeting constraints having a predetermined priority (column 10, lines 11-26).

As per claim 9, Capek et al teaches a reschedule engine operable to automatically reschedule overridden scheduled uses (column 10, lines 11-26).

As per claim 10, Capek et al teaches a notification engine interfaced with the availability and reschedule engines, the notification engine operable to automatically notify attendees of a meeting scheduled according to a set of resources of the ordered list and to automatically notify attendees of rescheduling (column 4, lines 50-57 – notifications and column 10, lines 11-26 – changes to schedules)

As per claim 11, Capek et al teaches a resource engine interfaced with the scheduled events database and the heterogeneous resources, the resource engine operable to initiate, terminate and track use of the heterogeneous resources in compliance with the schedule (column 4, lines 23-32 – schedules and monitors use of resources/equipment).

As per claim 12, Capek et al teaches the heterogeneous resources comprise at least video conference resources, audio conference resources and network resources (column 4, lines 19-31).

As per claim 13, Capek et al teaches identifying schedule constraints associated with the meeting (column 3, lines 6-56; column 7, lines 40+); ordering in priority a list of plural sets of candidate heterogeneous resources, each set having a valid configuration that satisfies the scheduling constraints (column 4, lines 1-36 – optimization of meeting variables based on weights); selecting a set of heterogeneous resources from the ordered list; scheduling the heterogeneous resources to support the meeting (column 4, lines 1-36 – optimization of meeting

variables based on weights); automatically notifying attendees (column 4, lines 50-57 –

notifications); automatically initiating one or more the heterogeneous resources according to the

schedule (column 4, lines 1-36 – optimization of meeting variables based on weights – resources

are scheduled for use); and limiting access to predetermined heterogeneous resources according

to one or more required authorizations (column 9, lines 60-67 – attendees have weighting factors

indicating who is more important to the scheduling process

  As per claim 14, Capek et al teaches identifying one or more biasing weights associated

with one or more schedule constraints; and ordering the priority list according to the biasing

weights (column 7, lines 40-49 – optimization with consideration of constraints)

  As per claim 15, Capek et al teaches estimating a cost associated with each set of

heterogeneous resources; and providing greater priority to sets having smaller costs (column 7,

lines 40-49 – constraints; column 10, lines 48-50 min. cost).

  As per claim 16, Capek et al teaches associating one or notification parameters with each

attendee; and selecting one or more notification medium for each attendee based on the

notification parameters associated with the attendee (column 4, lines 47-57 – attendees authorize

automatic entry into a calendar).

  As per claim 20, Capek et al teaches the heterogeneous resources comprise at least video

conference, audio conference and network resources (column 4, lines 19-31).

  As per claim 21, Capek et al teaches a user interface operable to accept meeting

constraints (column 3, lines 6-56; column 7, lines 40+); a resource properties database storing

schedules for the heterogeneous resources (column 4, lines 19-32); a scheduled events database

storing schedules for the heterogeneous resources (column 4, lines 19-32); a configuration

engine interfaced with the user interface and resource properties database, the configuration

engine operable to apply the meeting constraints and the resource properties to priority rules that

generate an ordered list of heterogeneous resource sets, each set having a valid configuration that

satisfies the meeting constraints (column 4, lines 1-36 – optimization of meeting variables based

on weights); an availability engine interfaced with the configuration engine and the scheduled

events database, the availability engine operable to select heterogeneous resources from the

ordered list based on the scheduled availability of resources (column 4, lines 29-32); and an

access controller interfaced with the availability engine and the resource properties database, the

access controller operable to restrict scheduling of one or more resources having limited access

properties (column 4, lines 19-32 – resource availability).

      As per claim 22, Capek et al teaches the configuration engine is further operable to order

the list of heterogeneous resources according to a cost function, the list ordered with the greatest

priority given to the set of heterogeneous resources having the least cost to satisfy meeting

constraints (column 3, lines 56-67; column 10, lines 48-50 – traditional optimization of variables

based on constraints; includes minimization of costs).

      As per claim 23, Capek et al teaches the configuration engine cost function adjusts to

user-selected weights for one or more meeting constraints (column 7, lines 40-49 – constraints;

column 10, lines 48-50 min. cost).

      As per claim 24, Capek et al teaches the user-selected weights comprise one or more of

meeting timing capacity and locality (column 7, lines 40-49 – constraints)

      As per claim 25, Capek et al teaches identifying resources of the priority list that are

unavailable to satisfy meeting constraints due to a scheduled use; and monitoring the unavailable

resources for subsequent availability to satisfy the meeting constraints (column 7, lines 40-49 –

availability is monitored for optimization of the schedule).

As per claim 27, Capek et al teaches the access controller is further operable to override a

scheduled use of a resource to satisfy meeting constraints having a predetermined priority

(column 10, lines 11-26).

As per claim 28, Capek et al teaches a reschedule engine operable to automatically

reschedule overridden scheduled uses (column 10, lines 11-26).

As per claim 29, Capek et al teaches a notification engine interfaced with the availability

and reschedule engines, the notification engine operable to automatically notify attendees of a

meeting scheduled according to a set of resources of the ordered list and to automatically notify

attendees of rescheduling (column 4, lines 50-57 – notifications and column 10, lines 11-26 –

changes to schedules)

As per claim 30, Capek et al teaches a resource engine interfaced with the scheduled

events database and the heterogeneous resources, the resource engine operable to initiate,

terminate and track use of the heterogeneous resources in compliance with the schedule (column

4, lines 23-32 – schedules and monitors use of resources/equipment).

As per claim 31, Capek et al teaches the heterogeneous resources comprise at least video

conference resources, audio conference resources and network resources (column 4, lines 19-31).

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12.   Claim 7, 17 and 18 and 26are rejected under 35 U.S.C. 103(a) as being unpatentable over

Capek et al, US 7,343,312.

        As per claims 7 and 26, Capek et al teaches the limited access property comprises an

authorization code to exceed a predetermined cost associated with resource use (column 10, lines

48-50). Official notice is taken that it is old and well known to authorize excess spending in

certain situations. It would have been obvious to one of ordinary skill in the art at the time of the

invention to include this authorization in Capek et al. As the optimization takes place it is

inevitable that if other variables are optimized, the minimization of costs may suffer and due to

budget concerns of any company, it would be obvious to authorize excess spending.

        As per claim 17, Capek et al teaches the notification medium includes email, instant

message or other means and since the system accommodates for telephonic communication

(column 9, lines 20-26), but does not explicitly teach using a telephone to send a computer

generated voice reminder. Offical notice is taken that it would have been obvious to one of

ordinary skill in the art to utilize a telephone sending a computer generated voice reminder. The

modification of Capek et al with functionally equivalent equipment would produce a predictable

result.

        As per claim 18, Capek et al teaches the notification medium includes email, instant

message or other means and since the system accommodates for telephonic communication

(column 9, lines 20-26), but does not explicitly teach the notification further comprises cell

phone call with in a predetermined time of the scheduled meeting. Offical notice is taken that it

would have been obvious to one of ordinary skill in the art to utilize a cell phone call as a reminder. The modification of Capek et al with functionally equivalent equipment would produce a predictable result

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brad Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Johnna R Loftis/
Examiner, Art Unit 3624